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12
13 Attorneys for Defendants
14 MATTERPORT, INC., RJ PITTMAN,
DAVE GAUSEBECK, MATT BELL,
CARLOS KOKRON, PETER HEBERT,
JASON KRIKORIAN, and MIKE GUSTAFSON

15
16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

18
19 SHAWN LYNCH, on behalf of himself
and all others similarly situated,

20 Plaintiffs,

21 vs.

22 MATTERPORT, INC., RJ PITTMAN,
DAVE GAUSEBECK, MATT BELL,
CARLOS KOKRON, PETER HEBERT,
JASON KRIKORIAN, and MIKE
GUSTAFSON,

23 Defendants.

24 Case No.

25 (Santa Clara Superior Court Case No.:
22CV396251)

26 **DEFENDANTS' NOTICE OF
REMOVAL OF CLASS ACTION TO
FEDERAL COURT; SUPPORTING
DECLARATION OF COUNSEL**

27 **DIVERSITY**

28 **[CLASS ACTION]**

29
30 **PLEASE TAKE NOTICE** that Defendants MATTERPORT, INC., RJ PITTMAN,
31 DAVE GAUSEBECK, MATT BELL, CARLOS KOKRON, PETER HEBERT, JASON
32 KRIKORIAN AND MIKE GUSTAFSON (collectively, "Defendants") hereby remove the
33 above-captioned action from the Superior Court of the State of California, for the County

1 of Santa Clara, to the United States District Court for the Northern District of California
 2 under 28 U.S.C. §§ 1332, 1441, 1446, and 1453. In support of this Notice of Removal,
 3 Defendants state as follows:

4 1. Removal is proper in this case because this Notice of Removal demonstrates
 5 that all requirements for removal are met under 28 U.S.C. §§ 1332(d) and 1453 pursuant to
 6 the Class Action Fairness Act (“CAFA”).

7 2. On March 28, 2022, Plaintiff SHAWN LYNCH (“Plaintiff”) commenced
 8 this putative class action against Defendants by filing a Class Action Complaint
 9 (“Complaint”) in the Superior Court of the State of California, for the County of Santa
 10 Clara, bearing the case number 22CV396251. Declaration of Michael K. Johnson
 11 (“Johnson Decl.”), ¶ 3, Exh. A.

12 3. On April 13, 2022, Plaintiff filed a First Amended Complaint (“FAC”).
 13 Johnson Decl., Exh. C. The FAC alleges six causes of action for: (1) alleged violations of
 14 the California Seller-Assisted Marketing Plan Act, Cal. Civ. Code §1812.200, et seq., and
 15 Cognate Laws of other Jurisdictions (“Multi-State Class”); (2) alleged violations of the
 16 California Seller-Assisted Marketing Plan Act, Cal. Civ. Code §1812.200, et seq.
 17 (“National Class”); (3) alleged violations of California’s Unfair Competition Law
 18 (“UCL”), Cal. Bus. & Prof. Code §17200, et seq.; (4) alleged violations of California’s
 19 False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §17500, et seq.; (5) alleged
 20 breach of the implied covenant of good faith and fair dealing; and (6) declaratory and
 21 injunctive relief.

22 4. Plaintiff served the summons, complaints and related documents on
 23 Defendants on May 27, 2022. Johnson Decl., ¶ 2, Exh. E. This Notice of Removal is
 24 timely filed within thirty days of service of process. 28 U.S.C. § 1446(b).

25 5. The Superior Court of the State of California, County of Santa Clara, is
 26 located within the Northern District of California. Thus, venue is proper under 28 U.S.C. §
 27 84(a) because this is the “district and division embracing the place where such action is
 28 pending.” 28 U.S.C. § 1441(a).

1 6. No previous application has been made for the relief requested herein.

2 7. Pursuant to 28 U.S.C. § 1446(a), all process, pleadings, and orders that have
3 been filed, served, or received by Defendants in this action are attached hereto,
4 specifically:

5 a. A true and correct copy of Plaintiff's Complaint with Civil Case Cover Sheet
6 filed March 28, 2022 in the Superior Court of the State of California, for the
7 County of Santa Clara, bearing the case number 22CV396251 is attached
8 hereto as Exhibit A. Johnson Decl., ¶ 3.

9 b. A true and correct copy of the Superior Court's Order Deeming Case
10 Complex and Staying Discovery and Responsive Pleading Deadline filed
11 March 28, 2022 is attached hereto as Exhibit B. Johnson Decl., ¶ 4.

12 c. A true and correct copy of Plaintiff's First Amended Complaint filed April
13 13, 2022 is attached hereto as Exhibit C. Johnson Decl., ¶ 5.

14 d. A true and correct copy of Plaintiff's Notice of Related Case (19CV350887)
15 filed May 19, 2022 is attached hereto as Exhibit D. Johnson Decl., ¶ 6.

16 e. True and correct copies of Plaintiff's Proofs of Service of Summons and
17 Complaint on all Defendants filed on June 1, 2022 are attached hereto as
18 Exhibit E. Johnson Decl., ¶ 7.

19 8. This case is related to the case that is currently pending in the Northern
20 District, *John Stummelin v. Matterport, Inc., et al.*, Case 3:20-cv-04168-WHA, because (1)
21 the actions concern substantially the same parties, property, transaction, or event; and (2) it
22 appears likely that there will be an unduly burdensome duplication of labor and expense or
23 conflicting results if the cases are conducted before different Judges. *See* Local Rule 3-
24 12(a). Defendants will file an Administrative Motion to Consider Whether Cases Should
25 be Related pursuant to Local Rule 3-12(b) with this Notice of Removal.

26 9. A true and correct copy of this Notice of Removal will be served upon all
27 parties and filed with the Clerk of the Superior Court of the State of California, County of
28 Santa Clara in accordance with 28 U.S.C. § 1446(d).

1

2 **I. REMOVAL IS PROPER DUE TO THE JURISDICTION CONFERRED**

3 **UNDER THE CLASS ACTION FAIRNESS ACT**

4 10. This case is subject to removal under the Class Action Fairness Act
 5 (“CAFA”) of 2005. Pub. L. No. 109-2, 119 Stat. 4. 28 U.S.C. §§ 1332(d) and 1453.

6 11. CAFA grants federal district courts jurisdiction over civil class action
 7 lawsuits in which any plaintiff is a citizen of a state different from any defendant, and
 8 where the aggregate amount in controversy exceeds \$5,000,000, exclusive of interests and
 9 costs. 28 U.S.C. § 1332(d). Unlike other diversity jurisdiction cases, “no antiremoval
 10 presumption attends cases invoking CAFA.” *Dart Cherokee Basin Operating Co., LLC v.*
 11 *Owens*, 574 U.S. 81, 89 (2014).

12 12. Plaintiff purports to bring this class action on behalf of members of
 13 Matterport, Inc.’s Matterport Service Partner (“MSP”) program. *See* FAC ¶¶ 68-70.
 14 Plaintiff’s class action filed in State court is brought under California *Code of Civil*
 15 *Procedure* section 382, a statute similar to a class action as defined in Rule 23 of the
 16 Federal Rules of Civil Procedure. 28 U.S.C. § 1332(d)(1)(B).

17 13. This Court has subject matter jurisdiction over this case under 28 U.S.C. §
 18 1332(d) and 1453(b) because it is a civil putative class action wherein: (1) there are 100 or
 19 more members in Plaintiff’s proposed class; (2) Defendants are not a state, state official, or
 20 other governmental entity; (3) there is minimal diversity between at least one member and
 21 one defendant; and (4) the aggregate amount in controversy exceeds \$5,000,000.

22 **A. The Putative Class Size Consists of More than 100 Members.**

23 14. Plaintiff purports to bring this suit individually and on behalf three classes
 24 which are defined in the FAC at paragraphs 98-100 as:

25 **Multi-State Class.** “All persons who, within the applicable statute of limitations,
 26 became a Matterport Service Partner (‘MSP’) in one of the following jurisdictions:
 27 Alaska, California, Connecticut, Florida, Illinois, Indiana, Iowa, Kentucky, Maine,
 28 Maryland, Michigan, Minnesota, Nebraska, North Carolina, Ohio, Oklahoma, South

1 Carolina, South Dakota, Texas, Virginia, Washington, and Washington D.C.”

2 **National Class.** “All persons in the United States who, within the applicable statute
3 of limitations, applied online through Matterport’s website and became a Matterport
4 Service Partner (‘MSP’), and incurred expenses to operate their MSP business.”

5 **Injunctive Relief Class.** “All persons in the United States who, within the
6 applicable statute of limitations, applied online through Matterport’s website and
7 became a Matterport Service Partner (‘MSP’).”

8 15. Plaintiff alleges in the FAC that the “potential quantity of members of the
9 Classes as defined is believed to be 2,377 persons.” FAC ¶ 74. This is greater than the
10 requisite 100 members required under 28 U.S.C. § 1332(d)(5)(B).

11 16. The numerosity requirement is satisfied where it is apparent on the face of
12 the Complaint that there are over 100 putative class members. *Murray v. DirecTV, Inc.*,
13 2013 U.S. Dist. LEXIS 197794, at *18-19 (C.D. Cal. July 23, 2013). *See also Tompkins v.*
14 *Basic Research LL*, 2008 WL 1808316, at *3 (E.D. Cal. Apr. 22, 2008) (finding CAFA’s
15 numerosity requirement satisfied where facially apparent from the complaint); *Kuxhausen*
16 *v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1140 (9th Cir. 2013) (citing *Tompkins*).

17 **B. Defendants Are Not a Government Entity.**

18 17. Defendants Matterport, Inc., RJ Pittman, Dave Gausebeck, Matt Bell, Carlos
19 Kokron, Peter Hebert, Jason Krikorian’ and Mike Gustafson are not states, state officials or
20 any other government entities. Johnson Decl., ¶ 10.

21 **C. There is Minimal Diversity of Citizenship Between The Parties.**

22 18. At least one member of the proposed class is a citizen of a state different
23 from Defendants. 28 U.S.C. § 1332(d)(2)(A); *see* FAC ¶¶ 98-100.

24 19. Although no *evidence* of domicile is required at the notice of removal stage,
25 “[p]roof of residence in a state is usually thought *prima facie* evidence of domicile.”
26 *Bradley Min. Co. v. Boice*, 194 F.2d 80, 84 (9th Cir. 1951); *see also Barbosa v. Transp.*
27 *Drivers, Inc.*, 2015 WL 9272828, at *6 (C.D. Cal. 2015) (“a person’s residence is *prima*
28 *facie* evidence of his or her place of domicile for purposes of diversity jurisdiction)

1 (quoting *Bey v. SolarWorld Indus. Am., Inc.*, 904 F. Supp. 2d 1103, 1105 (D. Or. 2012)).
 2 Furthermore, “a party with the burden of proving citizenship may rely on the presumption
 3 of continuing domicile, which provides that, once established, a person’s state of domicile
 4 continues unless rebutted with sufficient evidence of change.” *Mondragon v. Capital One*
 5 *Auto Fin.*, 736 F.3d 880, 885 (9th Cir. 2013). Regardless, allegation of Plaintiff’s
 6 citizenship is sufficient for removal. *Ehrman v. Cox Communs., Inc.*, 932 F.3d 1223, 1227
 7 (9th Cir. 2019).

8 20. Further, where there are no allegations of citizenship of certain parties in the
 9 complaint, a removing party may introduce “objective facts” in support of removal that
 10 would tend to show the domicile or citizenship of a party in a particular state. *See Lew v.*
 11 *Moss*, 797 F.2d 747, 749 (9th Cir. 1986) (“[T]he determination of an individual’s domicile
 12 involves a number of factors (no single factor controlling), including: current residence,
 13 voting registration and voting practices, location of personal and real property, location of
 14 brokerage and bank accounts, location of spouse and family, membership in unions and
 15 other organizations, place of employment or business, driver’s license and automobile
 16 registration, and payment of taxes”).

17 21. According to the FAC, Plaintiff resides in “Washington D.C. and Reston,
 18 Virginia.” FAC ¶ 12. This allegation establishes that he is a citizen of Washington D.C.
 19 or the State of Virginia. *Lew v. Moss*, 797 F.2d at 751 (allegations of residency can create
 20 a rebuttable presumption of domicile supporting diversity of citizenship).

21 22. Defendant Matterport Inc. is a corporation organized under the law of
 22 Delaware, and at all relevant times its headquarters and principal place of business has
 23 been located at 352 E. Java Drive, Sunnyvale, California. Johnson Decl., ¶ 8; FAC ¶ 20.
 24 Matterport Inc. is a citizen of the state where its principal place of business is located and
 25 the state in which it has been incorporated. 28 U.S.C. § 1332(c). As such, Defendant
 26 Matterport Inc. is a citizen of Delaware and California.

27 23. Defendants RJ Pittman, Dave Gausebeck, Matt Bell, Carlos Kokron, Peter
 28 Hebert, Jason Krikorian and Mike Gustafson reside in California. Johnson Decl., ¶ 9.

1 24. The diversity requirements of CAFA require only that the citizen of any
 2 member of the class be diverse from any defendant. Here, because the named Plaintiff is a
 3 citizen of Washington D.C. or Virginia, and because Defendants are citizens of Delaware
 4 and/or California, the “minimal diversity” requirement under CAFA is satisfied. 28 U.S.C.
 5 § 1332(d)(2)(A).

6 25. Additionally, Plaintiff has alleged a Multi-State Class comprised of persons
 7 who became MSP members in 21 states and Washington D.C.: Alaska, California,
 8 Connecticut, Florida, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan,
 9 Minnesota, Nebraska, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota,
 10 Texas, Virginia and Washington. FAC ¶ 98.

11 **D. The Amount in Controversy Requirement Is Satisfied.**

12 26. Without making any admission of liability or damages with respect to any
 13 aspects of this case or the proper legal test(s) applicable to Plaintiff’s allegations on behalf
 14 of herself and the putative class, the amount in controversy exceeds the jurisdictional
 15 minimum of this Court as detailed below.

16 27. To remove a case under CAFA, a removing defendant need not submit any
 17 evidence of the facts establishing jurisdiction in its notice of removal. *Dart Cherokee*
Basin Operating Co., LLC, 574 U.S. at 83 (a notice of removal “need not contain
 19 evidentiary submissions.”). Rather, “[a] defendant’s notice of removal need include only a
 20 plausible allegation that the jurisdictional facts exist. *Id.* at 89. Evidence is required “only
 21 when plaintiff contests, or the court questions, the defendant’s allegation.” *Id.* (emphasis
 22 added); *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 924 (9th Cir. 2019) (courts may
 23 not remand where notice of removal plausibly alleges the basis for removal, without giving
 24 the defendant an opportunity to prove the jurisdictional requirements are satisfied).

25 28. The amount in controversy is “simply an estimate of the total amount in
 26 dispute . . . [and] [i]n that sense, the amount in controversy reflects the *maximum*
 27 recovery [a] plaintiff could reasonably recover” on a complaint at the time of removal.
 28 *Arias*, 936 F.3d at 927. Moreover, “[a]n assertion that the amount in controversy exceeds

1 the jurisdictional threshold is not defeated merely because it is equally possible that the
 2 damages might be less than the requisite amount.” *Id.* (quotation marks omitted).

3 29. The Supreme Court in *Dart Cherokee* held that “no antiremoval presumption
 4 attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain
 5 class actions in federal court,” adding that “CAFA should be read ‘with a strong preference
 6 that interstate class actions should be heard in a federal court if properly removed by any
 7 defendant.’” *Id.* at 89. Following *Dart Cherokee*, the Ninth Circuit has directed the
 8 district courts to “interpret CAFA’s provisions under section 1332 broadly in favor of
 9 removal . . .” *Jordan v. Nationstar Mortg. LLC*, 781 F.3d 1178, 1184 (9th Cir. 2015)
 10 (emphasis added); *see also Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir.
 11 2015) (“Congress intended CAFA to be interpreted expansively.”) In *Bridewell-Sledge v.*
 12 *Blue Cross*, 798 F.3d 923, 929 (9th Cir. 2015), the Ninth Circuit held that under *Dart*
 13 *Cherokee*, the district court erred “in its remand orders by applying a ‘strong presumption
 14 against removal jurisdiction.’” *See also Moppin v. Los Robles Reg’l Med. Ctr.*, 2015 U.S.
 15 Dist. LEXIS 129574, at *4 (C.D. Cal. 2015) (“[N]o presumption against removal exists in
 16 cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class
 17 actions in federal court.”).

18 30. Defendants dispute that this class could ever be certified, and Defendants
 19 dispute that they are liable for any of Plaintiff’s claims asserted in the FAC. Nevertheless,
 20 the aggregate amount in controversy, exclusive of interests and costs, exceeds \$5,000,000.
 21 28 U.S.C. § 1332(d)(2), (6). Although Plaintiff does not plead a specific amount of
 22 damages in the FAC, Defendant can demonstrate that the aggregate amount in controversy
 23 exceeds \$5,000,000. *See Dart Cherokee Basin Operating Co., LLC*, 574 U.S. at 84
 24 (“When the plaintiff’s complaint does not state the amount in controversy, the defendant’s
 25 notice of removal may do so.”).

26 31. Here, Plaintiff Shawn Lynch alleges that he purchased a Matterport Pro2 3D
 27 camera on March 28, 2018, that he became an MSP member on April 25, 2018, that he
 28 paid an annual access fee for Cloud Services and Software support in the amount of \$499

1 per year, that he invested his time learning to use Matterport's hardware equipment and
 2 software and operating his business, and that he purchased a second Matterport Pro2
 3 camera. FAC ¶¶ 85-88, 94. Plaintiff further alleges that he lost a client, Cushman &
 4 Wakefield, which provided 13% of Plaintiff's company's revenue in 2020 and 26% of
 5 Plaintiff's company's revenue in 2022. FAC ¶¶ 95-96.

6 32. Plaintiff alleges that his claims are "typical of the claims of all members of
 7 the classes because all members of the classes suffered similar injuries, losses, are owed
 8 restitution and/or pecuniary economic damages arising out of Defendants' common course
 9 of conduct . . ." FAC ¶ 105.

10 33. In the related case of *John Stummelin v. Matterport, Inc., et al.*, Case 3:20-
 11 cv-04168-WHA, Plaintiff Stummelin's First Amended Class Action Complaint filed
 12 February 11, 2021 alleged: "[o]n information and belief, each Class member's individual
 13 damages exceed \$22,000 and there are at the very least 230 members in the Nationwide
 14 Class. Thus, the aggregated amount in controversy exceeds \$5,000,000." *See* Case 3:20-
 15 cv-04168-WHA, Dkt. No. 54, Filed 02/11/21, Page 5 of 40. Johnson Decl., ¶ 11, Exh. F.

16 34. Moreover, Plaintiff Stummelin alleged in his motion for class certification
 17 filed December 23, 2021 that "the damages at stake" in the class action were
 18 "approximately \$11,555 on average per MSP" calculated as follows: "\$9,381,718 in
 19 camera sales + \$18,085,502 in Cloud Service Plan sales to MSPs = \$27,467,220, divided
 20 by 2,377 MSPs = \$11,555 per MSP on average." *See* Case 3:20-cv-04168-WHA, Dkt. No.
 21 99-1, Filed 12/23/21, Page 31 of 31, and n.12. Johnson Decl., ¶ 12, Exh. G.

22 35. The number of class members (2,377) alleged in Plaintiff Lynch's FAC is
 23 the same number of class members alleged in Plaintiff Stummelin's unsuccessful motion
 24 for class certification. *Compare* FAC ¶ 104 with 3:20-cv-04168-WHA, Dkt. No. 99-1,
 25 Filed 12/23/21, Page 31 of 31, n.12.

26 36. Notably, the attorneys representing Plaintiff Stummelin in Case 3:20-cv-
 27 04168-WHA are the same attorneys who are representing Plaintiff Lynch and the putative
 28 class in this action.

1 37. Plaintiff seeks the following relief on behalf of himself and the putative
 2 class: declaratory and injunctive relief, restitution, actual damages, statutory or liquidated
 3 damages, punitive damages, rescission of contract, attorneys' fees and costs, and interest.
 4 *See* FAC at 37, Prayer for Relief.

5 38. Based on the foregoing information, the \$5,000,000 amount in controversy
 6 requirement under CAFA may easily be met for this action by looking at the number of
 7 members of the putative class and comparing the allegations of this action to the
 8 allegations of the related *Stemmelin* matter. The number of class members is alleged to be
 9 the same in both cases (2,237) and the nature of the damages claimed by the Plaintiffs is
 10 essentially the same (the cost of 3D cameras and Cloud Service Plans purchased from
 11 Matterport). The amount of 3D camera sales plus Cloud Service Plan sales to MSP class
 12 members equals \$27,467,220, divided by 2,377 MSPs, equals \$11,555 per MSP on
 13 average. *See* Case 3:20-cv-04168-WHA, Dkt. No. 99-1, Filed 12/23/21, Page 31 of 31,
 14 n.12. Johnson Decl., ¶ 12, Exh. G.

15 39. In addition to damages, for CAFA cases, "attorneys' fees awarded under fee-
 16 shifting statutes or contracts are included in the amount in controversy." *Fritsch v. Swift*
 17 *Transp. Co. of Ariz.*, 899 F.3d 785, 794 (9th Cir. 2018). Further, "a court must include
 18 future attorneys' fees recoverable by statute or contract when assessing whether the
 19 amount-in-controversy requirement is met." *Id.*

20 40. Here, Plaintiff seeks attorneys' fees and litigation costs in his FAC at Count I
 21 (FAC ¶ 118), Count II (FAC ¶ 130), Count III (FAC ¶ 142), and Count IV (FAC ¶ 149).

22 41. In general, a 25% benchmark of the potential damages may approximate the
 23 potential attorneys' fees. *See, e.g., Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th
 24 Cir. 1998) (holding that where attorneys' fees are permissibly used in calculating the
 25 amount in controversy, a benchmark of 25% of the common fund was appropriate).

26 42. Although Defendants deny liability and damages, and deny that Plaintiff is
 27 entitled to recover attorneys' fees in the case at hand, for purposes of assessing the amount
 28 in controversy requirement, applying a 25% benchmark based on Plaintiff Stummelin's

1 claim for damages resulting from sales of 3D cameras and Cloud Service Plans of
 2 \$27,467,220, results in attorneys' fees of approximately \$6,866,805.

3 43. The above amount in controversy does not take into account the value of
 4 Plaintiff's claims for declaratory and injunctive relief.

5 **II. NO CAFA EXCEPTIONS APPLY**

6 44. CAFA contains several exceptions to its grant of original jurisdiction,
 7 contained in 28 U.S.C. sections 1332(d)(3)-(4). The party resisting removal has the burden
 8 of proving the existence of a CAFA exception. *King v. Great Am. Chicken Corp.*, 903
 9 F.3d 875, 878 (9th Cir. 2018).

10 45. These exceptions are not applicable here, because fewer than one third of the
 11 members of all proposed plaintiff classes in the aggregate are citizens of the State in which
 12 the action was originally filed. Based on its business records, Matterport has determined
 13 that 292 MSP members are residents of the State of California. This is less than one third
 14 of the members of all proposed plaintiff classes in the aggregate which is alleged to be
 15 2,377. Johnson Decl., ¶ 13.

16 **III. TIMELINESS OF REMOVAL**

17 46. Under 28 U.S.C. section 1446(b), the 30-day period for filing a notice of
 18 removal begins to run only after formal service is made. In *Murphy Bros., Inc. v. Michetti*
 19 *Pipe Stringing, Inc.*, 526 U.S. 344 (1999), the Supreme Court explained that under 28
 20 U.S.C. § 1446(b), “[a]n individual or entity named as a defendant is not obliged to engage
 21 in litigation unless notified of the action, and brought under a court’s authority, by formal
 22 process.” *Id.* at 347. *See also Quality Loan Serv. Corp. v. 24702 Pallas Way, Mission*
 23 *Viejo, CA 92691*, 635 F.3d 1128, 1132-33 (9th Cir. 2011)

24 47. Plaintiff's service of the summons, FAC and related documents was deemed
 25 complete on Defendants on May 27, 2022. On that date, Defendants' counsel signed and
 26 returned Acknowledgements of Receipt on behalf of all Defendants, and service was
 27 deemed complete as of that date. Johnson Decl., ¶¶ 2, 7 and Exh. E. Therefore, this Notice
 28 of Removal is timely filed within thirty days of service of process. 28 U.S.C. § 1446(b).

1 48. No previous application has been made for the relief requested herein.

2 **IV. NO OTHER DEFENDANTS HAVE JOINED THE ACTION**

3 49. There are no other defendants that have been named or served in this action,
4 therefore, there are no other defendants to join in this Notice of Removal.

5 **V. SERVICE OF NOTICE ON PLAINTIFFS AND STATE COURT**

6 50. Contemporaneous with the filing of this Notice of Removal in the United
7 States District Court for the Northern District of California, written notice of the removal
8 will be given by the undersigned to Plaintiff's counsel of record:

9 COHELAN KHOURY & SINGER
10 Timothy D. Cohelan (SBN 60827), tcohelan@ckslaw.com
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16 Chicago, Illinois 60602
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17 Facsimile: (312) 440-4180

18 51. A copy of this Notice of Removal will be served upon all parties and filed
19 with the Clerk of the Superior Court of the State of California, for the County of Santa
20 Clara, where the action is pending, as required by 28 U.S.C. § 1446(d).

21 WHEREFORE, Defendant removes this action from the Superior Court of the State
22 of California, for the County of Santa Clara, bearing case number 22CV396251, to this
23 Court, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

24 DATED: June 23, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP



25 By:

26
27 JON P. KARDASSAKIS
MICHAEL K. JOHNSON
28 Attorneys for Defendants

1 **(BY ELECTRONIC TRANSMISSION ONLY)** Only by emailing the document to the person
2 at the email address listed above based on notice provided on March 16, 2020, that during the
3 Coronavirus (COVID-19) pandemic, this office will be working remotely, not able to send physical
4 mail as usual, and is therefore using only electronic mail. No electronic message or other indication
5 that the transmission was unsuccessful was received within a reasonable time after the transmission.

6 I declare under penalty of perjury under the laws of the United States of America that the
7 above is true and correct.
8

9 

10 Dated: June 23, 2022

11 Sandra Hayes

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